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No. 21994

IN THE
United States Circuit Court of Appeals
NINTH CIRCUIT

J. A. CRESSEY,

Plaintiff in Error,

vs.

INTERNATIONAL HARVESTER COMPANY OF
AMERICA, a Corporation,

Defendant in Error.

On Writ of Error to the United States
District Court, District of Oregon

TRANSCRIPT OF RECORD.

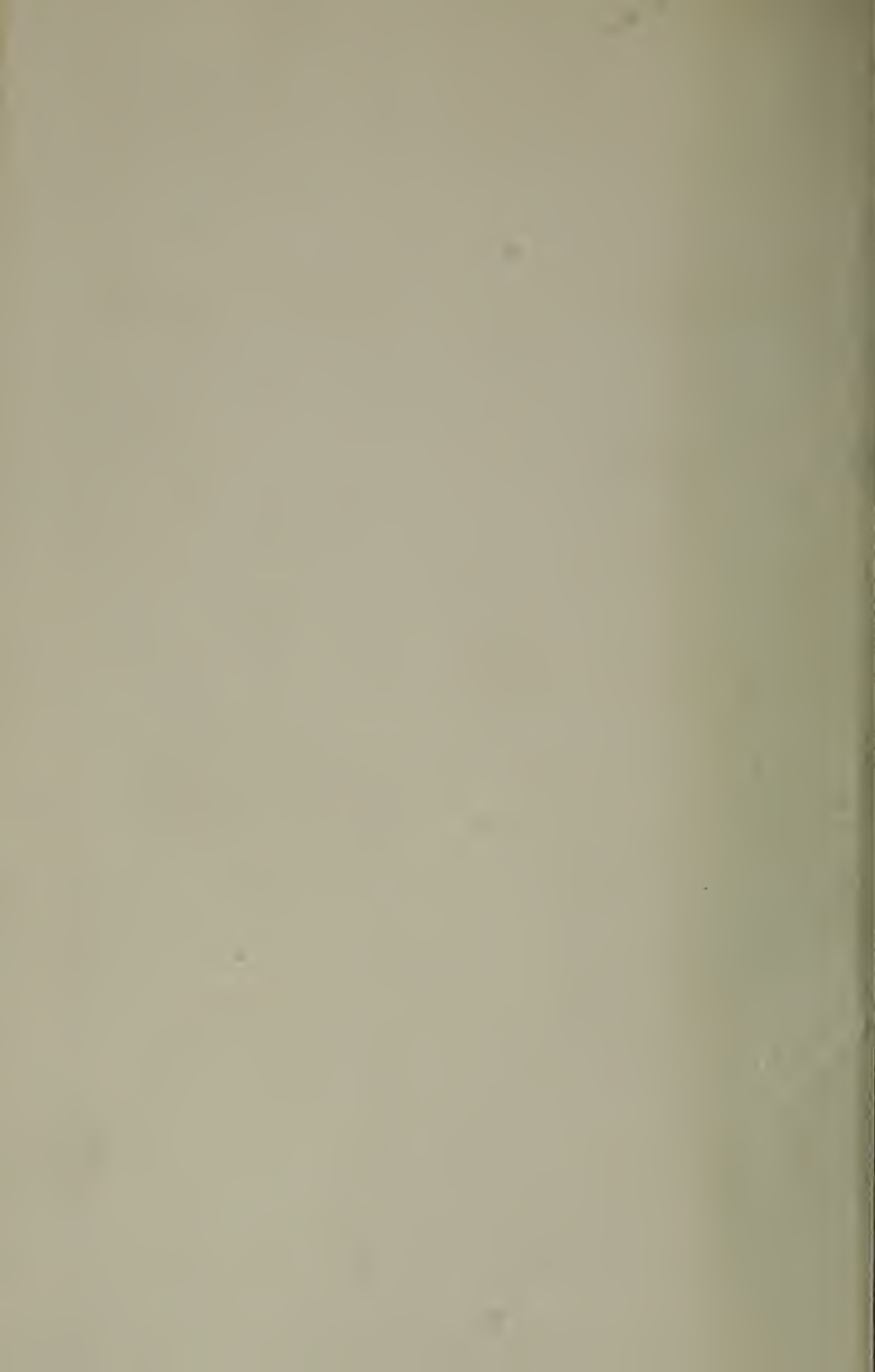
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J. A. CRESSEY,

Plaintiff in Error,

VS.

INTERNATIONAL HARVESTER COMPANY OF
AMERICA, a Corporation,

Defendant in Error.

**Names and Addresses of Attorneys
Upon This Writ:**

For the Plaintiff in Error:

S. A. KEENAN,

Empire Bldg., Seattle, Wash.

For the Defendant in Error:

COLE & COLE,

Chamber of Commerce Bldg., Portland, Oregon

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*In the District Court of the United States, for the
District of Oregon.*

BE IT REMEMBERED, That on the 15 day of December, 1911, there was duly filed in the Circuit Court of the United States for the District of Oregon, an Amended Complaint, in words and figures as follows, to wit:

[Amended Complaint.]

*In the Circuit Court of the United States, for the
District of Oregon.*

J. A. CRESSEY,

Plaintiff,

vs.

THE INTERNATIONAL HARVESTER COM-
PANY OF AMERICA, a corporation,
Defendant.

Now comes the plaintiff and for causes of action against said defendant, complains and alleges.

I.

For a first cause of action:

1. That said defendant now is and at all the times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin.

2. That on or about August 1st, 1908, plaintiff and defendant through its general agent, J. C. Sheldon, entered into a contract in writing, the original of which is in the possession of said defendant, wherein and whereby plaintiff agreed to devote all his time and services to defendant as a collector of its commer-

cial paper in a certain territory tributary to Aberdeen, South Dakota, for an indefinite period, at a monthly salary of One Hundred Twenty-five Dollars (\$125.) per month besides a commission or bonus as hereinafter set forth.

3. That he immediately entered into the employment of said defendant and so remained until on or about August 1st, 1910.

4. As a further consideration for plaintiff's services under said contract, it was then and there agreed by defendant through its said general agent, J. C. Sheldon, as a part of said contract, that in the event plaintiff collected desperate claims aggregating Twenty-five Hundred Dollars (\$2,500.) between the dates of January 1st, 1909 and January 1st, 1910; and that the total cost and expense to the defendant, for collecting its paper in cash, or securing the same, did not exceed the following schedule, plaintiff was to receive as a commission or bonus, the difference between the amount fixed by said schedule, and the actual amount of the cost and expense to defendant; viz:

For the first 8 months of the year. That is, from January 1st to September 1st, 1909,

Per cent cost on cash collected	7 per cent
Per cent cost on claims secured.....	5 per cent

For the four months of the year from September 1st, 1909, to January 1st, 1910.

Per cent cost on cash collected	2 per cent
Per cent cost on claims secured	2 per cent

5. That in consideration of the said promise and agreement of defendant to pay the said bonus or commission, the plaintiff during the year 1909 devoted his whole time and attention to the business of said defendant, making use of every available means to collect and realize on every claim that said defendant placed in his hands for attention, in doing so it was necessary for plaintiff to work and labor diligently each day and also a large part of many nights; and to attain said results in accordance with the schedule, he economized on expenses in every direction and as a result of said extraordinary labor, efforts, application and economy, he was enabled to attain the following results in collecting and securing the paper of said Company in said territory, viz:

Total amount of cash collected from January 1st, 1909 to September 1st, 1909....	22,373.53
Total amount of notes and claims of said Company in said territory renewed and secured during said period	12,340.05
Total amount of expense incurred by plaintiff in making said collections and procuring said renewals, including his salary during said period	1,590.41
Total amount of cash collected from September 1st, 1909, to January 1st, 1910.....	112,140.29
Total amount of notes and claims of said Company in said territory renewed and secured during said period	11,290.24

Total amount of expense incurred by plaintiff in making the said collections and procuring said renewals, including his salary during said period 884.47

6. That during said year of 1909, plaintiff collected more than \$4000.00 of desperate claims belonging to said defendant Company, and claims that were considered by said Company as practically uncollectable.

7. That by reason of said cash collections and the renewing and securing of defendant's paper as aforesaid, plaintiff earned as said commission and bonus over and above his actual expense and costs to the Company, including his salary, according to said contract and schedule, the sum of Two Thousand One Hundred Seventy-two Dollars (\$2,172.78) and seventy-eight cents, which became due and payable on January 1st, 1910.

8. That no part of said claim has been paid except the sum of Eighty-nine Dollars and eighty-two cents (\$89.82) paid thereon by the Company on or about February 10th, 1910, leaving a balance still due plaintiff from said Company on said claim, in the sum of Two Thousand Eighty-two Dollars and ninety-six cents (\$2,082.96) together with interest thereon at 7 per cent per annum from January 1st, 1910, as provided by the laws and statutes of the State of South Dakota where the said contract was made and delivered.

II.

For a second cause of action:

1. Plaintiff refers to and hereby makes paragraph "1" of his first cause of action a part and parcel of this cause of action.

2. That on November 15th, 1910, plaintiff entered into a contract in writing with said defendant at Portland, Oregon, wherein and whereby he was employed by said defendant in the capacity of a collector of its commercial paper at a salary of One Hundred Twenty-five Dollars (\$125.) per months which employment was for an indefinite period.

3. In said contract it was therein provided: "Either party may terminate this agreement by giving 30 days' notice to the other party. The first party (defendant) may terminate the agreement at any time for neglect of duty, refusal to follow the instructions, or should it consider second party's work unprofitable or undesirable, in which event compensation shall cease the day and date the agreement is terminated."

4. That notwithstanding the terms and conditions of said contract, said defendant on or about July 24th, 1911, notified plaintiff that his employment with said defendant ceased from that date and that prior to said notification, he had received no intimation, knowledge or notice from said defendant that it intended to dispense with his services.

5. That said plaintiff did not neglect his duty to defendant, he did not refuse to follow instructions, that his work and services were profitable and desira-

ble to said defendant and that it had no cause or reason whatever for discharging him without giving the 30 days' notice as provided in said contract.

6. That by reason of said unlawful termination of said contract without giving the said 30 days' notice, said defendant is indebted to plaintiff in the sum of One Hundred Twenty-five Dollars (\$125).

7. That during the month immediately following said discharge, it was impossible for plaintiff to procure other employment and said month was a total loss to him by reason of his not receiving said notice as aforesaid.

WHEREFORE, Plaintiff prays judgment against the said defendant for the sum of Two Thousand Eighty-two Dollars and ninety-six cents (\$2,082.96) and interest thereon at 7 per cent since January 1st, 1910, together with the sum of One Hundred Twenty-five Dollars (\$125.) and interest thereon at 6 per cent since August 1st, 1911 together with costs and disbursements of this action.

S. A. KEENAN,

A. E. WHEELER,

Attys. for Plaintiff.

STATE OF OREGON,

County of Lane,—ss.

J. A. Cressey, Being first duly sworn on his oath says: That he is the plaintiff in the above entitled action, that he has read the foregoing Complaint, knows the contents thereof and believes the same to be true.

J. A. CRESSEY.

Subscribed and sworn to before me this 13 day of December, 1911.

[Notarial Seal.] WALTER B. JONES,

Notary Public in and for the State of Oregon residing at

[Endorsed]: Amended Complaint. Filed Dec. 15, 1911.

G. H. MARSH,
Clerk.

And afterwards, to wit, on the 15 day of December, 1911, there was duly filed in said Court, an Answer to Amended Complaint, in words and figures as follows to wit:

[Answer to Amended Complaint.]

In the Circuit Court of the United States, for the District of Oregon.

J. A. CRESSEY,

Plaintiff,

vs.

INTERNATIONAL HARVESTER COMPANY
OF AMERICA, a corporation,

Defendant.

Comes now the above named defendant and for an answer to plaintiff's amended complaint herein filed, admits, denies and alleges as follows:

I.

Defendant admits paragraph one of plaintiff's amended complaint.

II.

Answering paragraph two on page one of plaintiff's amended complaint, being paragraph two of plaintiff's first cause of action, defendant denies each and every allegation thereof, except that defendant admits that on the 18th day of July, 1908, plaintiff and defendant entered into a contract in writing, wherein and whereby plaintiff agreed to devote all his time and services to the defendant as a collector of its commercial paper in certain territory tributary to Aberdeen, South Dakota, for an indefinite period and a monthly salary of \$125.00 per month. Defendant denies that it at any time promised or agreed to pay plaintiff any commission or bonus for any services performed or to be performed for defendant by plaintiff.

III.

Answering paragraph three of plaintiff's first cause of action defendant admits that plaintiff entered into its employ on or about August 18, 1908, and so remained until September 1, 1910.

IV.

Defendant denies each and every allegation contained in paragraph four of plaintiff's first cause of action.

V.

Defendant denies each and every allegation contained in paragraph five of plaintiff's first cause of action.

VI.

Defendant denies each and every allegation con-

tained in paragraph six of plaintiff's first cause of action.

VII.

Defendant denies each and every allegation contained in paragraph seven of plaintiff's first cause of action.

VIII.

Defendant denies each and every allegation contained in paragraph eight of plaintiff's first cause of action.

As a further and separate defense to plaintiff's first cause of action defendant alleges:

I.

That on the 18th day of July, 1908, plaintiff and defendant entered into a certain contract in writing, which said contract is in words and figures as follows, to-wit: PERSONAL SERVICE AGREEMENT.

THIS AGREEMENT, entered into this 13th day of July, 1908, by and between the International Harvester Company of America, (Incorporated) party of the first part, and J. A. Cressey of Watertown, State of S. D., party of the second part.

WITNESSETH, That the first party hereby hires the second party to serve and to perform such duties and at such places as it may from time to time direct; and the second party agrees to faithfully perform to the best of his ability all the duties and responsibilities of such service, and to devote his whole and undivided time to the party of the first party during the continuance of this contract, and not to en-

gage, or to be engaged, nor to be interested in other business during the existence of this contract.

IN CONSIDERATION the first party will pay to the second party at the rate of One hundred twenty five and no|100 Dollars (\$125.00) per month and necessary traveling expenses actually incurred in the business while away from Aberdeen, S. D., his home or usual place of residence.

This contract to be in force from 15th day of August, 1908, until cancelled, which may be done by either party hereto, without liability for damage, by giving written notice.

And it is further agreed that the said second party is to furnish at his own expense to first party a bond for the sum of \$2,000.00 in some surety company, to be designated by the first party.

INTERNATIONAL HARVESTER COMPANY
OF AMERICA,

By J. C. Sheldon.

Approved at Chicago, Ill.,

July 18th, 1908,

International Harvester
Company of America,

J. A. Cressey,

By J. M. Coburn.

That said contract is the contract mentioned and described in paragraph two of plaintiff's amended complaint.

II.

That thereupon plaintiff immediately entered into the employ of defendant and continued to work for

defendant under and pursuant to the terms of said contract until the 13th day of August, 1909, when plaintiff and defendant entered into a certain contract in writing, which said contract is in words and figures as follows:

THIS AGREEMENT, entered into this 10th day of August, 1909, by and between the International Harvester Company of America, (Incorporated), party of the first part, and J. A. Cressey, of Aberdeen, State of S. D., party of the second part.

WITNESSETH: That the first party hires the second party to serve and to perform such duties and at such places as it may from time to time direct; and the second party agrees to faithfully perform to the best of his ability all the duties and responsibilities of such service, and to devote his whole and undivided time to the party of the first part during the continuance of this contract. Second party agrees to remit promptly to first party all money collected for first party.

IN CONSIDERATION the first party will pay to the second party at the rate of One hundred thirty-seven and 50/100 Dollars (\$137.50) per month and necessary traveling expenses actually incurred in the business while away from Aberdeen, S. D., his home or usual place of residence.

This contract to be in force from 1st day of August, 1909 until canceled, which may be done by either party hereto, without liability for damage, by giving written notice.

And it is further agreed that the said second party is to furnish at his own expense to first party a bond for the sum of \$2,000.00 in some surety company, to be designated by the first party.

INTERNATIONAL HARVESTER COMPANY
OF AMERICA,

By J. C. Sheldon.

J. A. Cressey.

Approved at Chicago, Ill., Aug. 13, 1909.

INTERNATIONAL HARVESTER COMPANY
OF AMERICA,

By J. M. Coburn.

III.

That thereupon plaintiff immediately entered into the employ of defendant and continued to perform work, labor and services for defendant under and pursuant to the terms of said contract until September 1, 1910.

IV.

Defendant further alleges that all services performed by plaintiff for defendant between July 18, 1908, and September 1, 1910, were performed pursuant and under the terms of the two contracts in writing hereinbefore set forth.

V.

Defendant further alleges that all of the salary provided for in said contracts to be paid for plaintiff's services has been paid by defendant to plaintiff, and that all services performed by plaintiff for defendant have been fully paid for by defendant.

Answering plaintiff's second cause of action defendant admits, denies and alleges, as follows:

I.

Defendant denies paragraph two thereof except that defendant admits that plaintiff and defendant entered into a certain contract on the 15th day of November, 1910, wherein and whereby plaintiff was employed by defendant in the capacity of a collector for its commercial paper at a salary of \$125.00 per month.

II.

Defendant further alleges that the contract entered into by and between plaintiff and defendant on the 15th day of November, 1910, is substantially in words and figures as follows:

AGREEMENT, entered into this 15th day of November, 1910, between the International Harvester Company of America, (Incorporated) party of the first part, and J. A. Cressey, of Eugene, Oregon, party of the second part.

The party of the first part hereby agrees to employ the party of the second part as long as needed beginning November 15th 1910, at the rate of \$125.00 Dollars per month and his necessary and legitimate traveling expenses when away from Eugene, Oregon.

The party of the second part hereby agrees to devote all of his time and ability to the transaction of first party's business as may be directed, and also agrees to make prompt, complete and accurate reports of his work and expenses to said first party. Second party agrees to remit promptly to first party all money collected for first party.

The agreement is subject to the following conditions: Second party to furnish first party a surety bond at any time if requested, for the sum of \$2,000.00, in the form to be designated by first party, at his own expense. Either party may terminate this agreement by giving thirty days' notice to the other party. The first party may terminate the agreement at any time for neglect of duty, refusal to follow instructions, or should it consider second party's work unprofitable or undesirable, in which event compensation shall cease the day and date the agreement is terminated.

Should the time of service be continued by first party beyond the time specified, it is to be on the same terms and conditions as above.

INTERNATIONAL HARVESTER COMPANY
OF AMERICA,

By L. W. Carnahan.

J. A. Cressey.

III.

Defendant admits paragraph four of said second cause of action.

IV.

Defendant denies paragraph five of said second cause of action.

V.

Defendant denies paragraph six of said second cause of action.

VI.

Defendant denies paragraph seven of said second cause of action.

VII.

Defendant further alleges that on the 24th day of July, 1911, said contract hereinbefore mentioned was terminated and cancelled by defendant for the reason that defendant considered plaintiff's services and work unprofitable and undesirable and no longer needed by defendant, and notified plaintiff on July 24, 1911, that said contract was terminated and that plaintiff's services for defendant were to cease immediately upon receipt of notice by plaintiff.

VIII.

Defendant further alleges that plaintiff has performed no work, labor or services for defendant since notice of the termination of said contract was given to plaintiff by defendant and that all work, labor and services performed by plaintiff under and pursuant to the terms of said contract have been fully paid for by defendant.

WHEREFORE, Defendant demands judgment against the plaintiff for its costs and disbursements incurred in this action.

COLE & COLE,
Attorneys for Defendant.

UNITED STATES OF AMERICA,

District of Oregon,

Multnomah County—ss.

I, L. W. Carnahan, being first duly sworn, depose and say, that I am the General Agent within the State of Oregon for defendant in the above entitled action:

and that the foregoing Answer is true as I verily believe.

(Sgd.) L. W. CARNAHAN.

Subscribed and sworn to before me this 16th day of Dec. 1911.

BARTLETT COLE,

Notary Public for the State of Oregon.

[Endorsed]: Answer. Filed December 18, 1911.

G. H. MARSH,

Clerk.

And afterwards, to wit, on the 23 day of January, 1912 there was duly filed in said Court, a Motion for Judgment on the Pleadings, in words and figures as follows to wit:

[Motion for Judgment on the Pleadings.]

In the District Court of the United States, for the District of Oregon.

J. A. CRESSEY,

Plaintiff,

vs.

INTERNATIONAL HARVESTER COMPANY
OF AMERICA, a corporation,

Defendant.

Comes now the above named defendant, by its attorneys, Cole & Cole, and moves the above entitled court that judgment be entered in favor of the defendant and against the plaintiff as demanded in defendant's answer.

COLE & COLE,
Attorneys for Defendant.

[Endorsed]: Motion. Filed Jan. 23, 1912.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on Monday, the 29 day of February, 1912, the same being the 89 Judicial day of the Regular November, 1911, Term of said Court; Present: the Honorable R. S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Order Sustaining Motion for Judgment on the Pleadings.]

*In the District Court of the United States, for the
District of Oregon.*

J. A. CRESSEY,

vs.

INTERNATIONAL HARVESTER COMPANY
No. 3863. February 19, 1912.

This cause heretofore submitted on motion of defendant for judgment on the pleadings came on regularly at this time for decision of the court, and thereupon, after due consideration, it is ordered that said motion be and the same is hereby sustained.

And afterwards, to wit, on Thursday, the 29 day of February, 1912, the same being the 98 Judicial day of the Regular November, 1911, Term of said Court; Present: the Honorable R. S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Judgment Entered February 29, 1912.]

*In the District Court of the United States, for the
District of Oregon.*

J. A. CRESSEY,

Plaintiff,

vs.

INTERNATIONAL HARVESTER COMPANY
OF AMERICA, a corporation,

Defendant.

No. 3863. February 29, 1912.

WHEREAS The above named defendant, International Harvester Company of America, having moved the above entitled court for a judgment on the pleadings in favor of the defendant and against the plaintiff, as demanded in defendant's answer, and the court having sustained said motion,

NOW THEREFORE, IT IS HEREBY CONSIDERED, ORDERED AND ADJUDGED That defendant, International Harvester Company of America, do have and recover of and from plaintiff, J. A. Cressey, its costs and disbursements incurred in this action, taxed at \$..... and that execution issue therefor.

And afterwards, to wit, on Monday, the 22 day of April, 1912, the same being the 43 Judicial day of the Regular March, 1912, Term of said Court: Present: the Honorable R. S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Order Granting Leave to File Second Amended
Complaint.]

*In the Circuit Court of the United States, for the
District of Oregon.*

J. A. CRESSEY,

Plaintiff,

vs.

INTERNATIONAL HARVESTER COMPANY

No. 3863. April 22, 1912.

This cause heretofore submitted upon motion for leave to file amended complaint came on regularly at this time for decision of the court, and thereupon, after due consideration, it is ordered that the order for judgment heretofore entered herein be and the same is hereby vacated and set aside, and leave granted plaintiff to file amended complaint; and it is further ordered that defendant have and hereby is granted ten days to file its answer herein.

And afterwards, to wit, on the 22 day of April, 1912, there was duly filed in said Court, a Second Amended Complaint, in words and figures as follows to wit:

[Second Amended Complaint.]

*In the Federal Court of the United States, for the
District of Oregon.*

J. A. CRESSEY,

Plaintiff,

vs.

INTERNATIONAL HARVESTER COMPANY
OF AMERICA, a corporation,
Defendant.

No. 3863.

Now comes the plaintiff and for a Second Amended Complaint, filed herein by permission of the court, and for causes of action against the said defendant, complains and alleges:

I.

For a First Cause of Action:

1. That defendant now is, and at all the times hereinafter mentioned, was a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin.

2. That during all said time, defendant corporation was engaged in the manufacture, sale and distribution of farm and agriculture implements and machinery throughout the United States. That in the conduct of its business, certain specific territory was assigned to a general agent to whom was intrusted the entire management of its business in that territory, and which general agent was authorized to appoint, with the approval of the company, sub-agents, whose duties were to make contracts with local dealers for the handling, sale and distribution of defendant's machinery; and to also appoint special sales agents to travel from place to place in the territory, setting up and demonstrating defendant's machines and assisting the local agents in consummating sales: to also appoint other agents to look after, collect, re-

new and secure its commercial paper. That the services of the latter class, or the collection agents, were required by defendant company principally from August until on or about January 1st following, but it was the practice and custom of said defendant to retain in its respective general agencies in exclusively farming districts such as Eastern South Dakota, one or two of its most competent and desirable collectors, who were kept in the field looking after its paper and collections throughout the entire year. It was also the custom and practice of said defendant company in its general agency in South Dakota to make annual contracts with its collecting agents during the months of July or August of each year, always reserving the right in said contract for its termination, by the agent or the company upon either giving notice to the other to that effect. According to its further custom and practice, said contracts were made on the printed forms provided by defendant, such as Exhibit "A" and "B" hereto annexed and made a part of this complaint. And while it was also the universal practice and custom of said defendant company, in South Dakota, for a long time prior thereto and at all the times mentioned in this complaint to pay its collecting agents a bonus or commission over and above the fixed salary stated in said printed contract, provided the agent reached a certain standard set by the company, and kept his expenses below a fixed limit, said defendant company, according to its said custom, and for its own special reason never incorporated the

agreement to pay said commission or bonus in its said printed contract for the stated salary. It was also the custom and practice of said defendant company in its general agency in South Dakota, through its general agent, J. C. Sheldon, not to pay its collection agents a fixed salary exceeding \$100. per month; that on account of plaintiff being in the company's employ for many years, and being considered by said company a competent and desirable man, in July 10th, 1908, he was employed as such collection agent at a fixed salary \$125.00, in addition to a bonus or commission as hereinafter stated, with the agreement that in reporting his expenses he should include in his voucher to the company, his salary of \$100. per month and immediately after the receipt of said voucher at the general office in Chicago, the company would remit directly to him the \$25.00 in addition to the \$100. paid at the general agent's office; and in accordance with the agreement and understanding, plaintiff did include in his vouchers to the general agent, his salary, \$100, per month, which was paid in addition to the \$25.00 as called for in the contract.

That in the agreement represented by said printed form, and in accordance with the universal custom and practice, of said defendant and its agents, the latter were not to be engaged in any business, nor to be employed by any other person or company while in defendant's employ. And according to said agreement, its collection agents were paid a fixed salary and all their necessary expenses, they being the

judges of the necessity of such expense; and according to said printed agreement and the recognized custom and practice of defendant and its collection agents, the latter were not required to work more than the customary day of eight hours, nor on holidays or Sundays.

3. That on or about July 1st, 1908, said defendant through its general agent, J. C. Sheldon, at Sioux Falls, S. D., solicited plaintiff to enter its employ as such collection agent, requesting him to sign one of its printed contracts, at a fixed salary of \$125. per month. At that time, plaintiff was familiar with the defendant company's said custom of paying said bonus or commission, and as an inducement and consideration for plaintiff's signing the said contract, said defendant through its said general agent promised and agreed that if plaintiff would sign said contract and enter into its employ, and continue therein during the balance of 1908 and all of 1909, it would pay to him in addition to the fixed salary as stated in said printed contract, a bonus or commission per the year of 1909, as more specifically set out in the following paragraph: said general agent then and there delivering to plaintiff a printed statement of said schedule, a copy of which is hereto annexed, marked Exhibit "C" and made a part of this complaint.

That relying absolutely upon defendant's promise and agreement to pay the said bonus or commission as aforesaid, and as defendant then and there well knew, plaintiff signed one of defendant's printed con-

tracts, wherein the fixed salary is stated at \$125.00, a copy of which contract is hereto annexed, marked Exhibit "A". That \$125.00 per month was not the real consideration for the execution and delivery of said contract, but was only a part thereof, said bonus or commission being the real incentive and consideration for plaintiff's entering into defendant's employ, which said defendant then and there well knew; and had plaintiff known at that time, or at any time prior to January 1st, 1910, that defendant would not pay the said bonus or commission, he would have discontinued in its employ, all of which the defendant well knew; and defendant also well knew that plaintiff's services were worth more than \$3,000. per year.

4. That at the time of the signing of said printed agreement, and at the execution and delivery thereof, and in consideration of plaintiff's signing and executing the same, and as an inducement for his signing and executing said contract, said defendant then and there promised and agreed that if plaintiff would use extraordinary efforts in the handling and collection of its commercial paper, and would reduce his personal expenses to the limit fixed in the following schedule, and would devote extra time to the collection and securing of said paper, and the performance of other services for defendant outside of, and beyond that required by said written contract, such as working over time on holidays, Sundays, nights, and work on desperate claims or those considered uncollectable, and remained in its employ un-

til January 1st, 1910, and further that if plaintiff collected desperate claims aggregating \$2,500. between the dates of January 1st, 1909 and January 1st, 1910, and that the total cost and expense to the defendant for the collection of its paper in cash, or secured notes, which did not exceed the following schedule, plaintiff was to receive as a commission or bonus, the difference between the amount fixed by said schedule and the actual cost and expense to defendant, viz:

For the first 8 months of the year. That is, from January 1st to September 1st, 1909.

Per cent cost on cash collected7 per cent
Per cent cost on claims secured5 per cent

For the four months of the year from September 1st, 1909, to January 1st, 1910.

Per cent cost on cash collected2 per cent
Per cent cash on claims secured2 per cent

5. That relying upon the said promise and agreement of the said defendant, plaintiff signed the foregoing written contract and entered into the service of said defendant company. That aside from discharging the duties required of him by said written contract, he devoted to said employment almost every day, extra time, and also devoted part of many nights, holidays and Sundays and for the purpose of keeping his personal expenses down, at a great inconvenience to himself, and at the impairment of his health, made a large portion of said collections without incurring any expense for traveling by train or livery, all for the purpose of keeping his personal expenses within the

above schedule, and for the purpose of collecting the amount of desperate claims hereinafter stated, and also in anticipation of earning said bonus or commission remained in defendant's service during the year 1909. And that by reason of said extraordinary service, labor and economy, all of which were outside of the regular contract, plaintiff was enabled to attain the following results in collecting and securing the paper of said company in said territory, viz:

Total amount of cash collected from January 1st, 1909 to September 1st, 1909.....	22,373.53
Total amount of notes and claims of said Company in said territory renewed and secured during said period	12,340.05
Total amount of expense incurred by plaintiff in making said collections and procuring said renewals, including his salary during said period.....	1,590.41
Total amount of cash collected from September 1st, 1909, to January 1st, 1910.....	112,140.29
Total amount of notes and claims of said Company in said territory renewed and secured during said period	11,290.24
Total amount of expense incurred by plaintiff in making the said collections and procuring said renewals, including his salary during said period.....	884.47

6. That during said year of 1909 ,plaintiff collect-

ed more than \$4000. of desperate claims belonging to said defendant Company, and claims that were considered by said Company as practically uncollectible.

That during all of said period, plaintiff sent in weekly reports of his work in accordance with said schedule showing on said reports in detail the work done for the previous week, the notes secured or collected, and also the desperate claims collected or secured.

7. That by reason of said cash collections and the renewing and securing of defendant's paper as aforesaid, plaintiff earned as said commission and bonus over and above his actual expense and costs to the Company, including his salary, according to said contract and schedule, the sum of Two Thousand One Hundred Seventy-two Dollars (\$2,172.78) and Seventy-eight cents which became due and payable on January 1st, 1910.

8. That no part of said claim has been paid except the sum of Eighty-nine Dollars and Eighty-two cents (\$89.82) paid thereon by the Company on or about February 10th, 1910, leaving a balance still due plaintiff from said Company on said claim, in the sum of Two Thousand Eighty-two Dollars and Ninety-six cents (\$2,082.96) together with interest thereon at 7 per cent per annum from January 1st, 1910, as provided by the law and statute of the State of South Dakota where the said contract was made and delivered.

9. That in accordance with said agreement and

on or about January 1st, 1910, plaintiff forwarded to defendant an itemized statement of the bonus or commission earned by him as aforesaid, and demanded of said defendant that it pay him the said sum of \$2,-172.78, in reply to which demand, said defendant recognized the agreement to pay a bonus or commission, but denied that there was due plaintiff thereon any other or further sum than \$89.82, for which amount defendant forwarded to plaintiff, a remittance for which sum plaintiff gave defendant credit, leaving a balance of \$2,082.96 still due and payable on said contract, which said defendant has ever since refused and neglected to pay.

10. Plaintiff further alleges that on or about August 24th, 1909, in accordance with defendant's said custom and practice in having its collection agents sign its said printed form of contract annually in July or August, defendant through its said general agent requested plaintiff to sign its printed form of contract, stating that the same in no manner affected plaintiff's said contract relating to the commission or bonus as aforesaid. That with the same promises and agreements to pay said bonus or commission that were made at the time plaintiff signed Exhibit "A", as hereinbefore alleged, and in anticipation and contemplation of said bonus or commission, which plaintiff was then earning, and which said defendant agreed should be paid to him in accordance with the previous agreement, and in reliance upon said promises and agreements, and with knowledge also of the

custom and practice of said company not to include its agreement and promise to pay said commission or bonus in its printed form of contract plaintiff signed its written form of contract wherein defendant promised to pay him a fixed salary of \$137.50 a month, provided he would make his vouchers for said salary monthly for only \$100. and after the same was received by the company, and after he was paid the \$100 a further remittance of \$37.50 would be sent directly from the main office of the company in Chicago. That said vouchers were so made and afterwards paid by defendant as aforesaid. A copy of which contract is hereto annexed, marked Exhibit "B" and made a part of this complaint.

That said printed form of contract did not express the entire agreement, and did not express the real consideration for plaintiff's service, the real consideration being in addition to said fixed salary, the bonus or commission which he had then earned and was earning. And said defendant, at the time, well knew that plaintiff would not have signed said printed form of contract had he known defendant would refuse to pay said bonus or commission as aforesaid. And had plaintiff known, at the time, that defendant would afterwards claim that this contract, in any manner affected his prior contract with defendant, he would not have signed it as the defendant then well knew.

For a Second Cause of Action :

1. Plaintiff refers to and hereby makes paragraph "I" of his first cause of action a part and parcel of this cause of action.

2. That on November 15th, 1910, plaintiff entered into a contract in writing with said defendant at Portland, Oregon, wherein and whereby he was employed by said defendant in the capacity of a collector of its commercial paper at a salary of One Hundred Twenty-five Dollars (\$125) per month which employment was for an indefinite period.

3. In said contract it was therein provided: Either party may terminate this agreement by giving 30 days' notice to the other party. The first party (defendant) may terminate the agreement, at any time for neglect of duty, refusal to follow instructions, or should it consider second party's work unprofitable or undesirable, in which event compensation shall cease the day and date the agreement is terminated, as more fully appears from a copy thereof hereto annexed marked "Exhibit "D" and made a part of this Amended Complaint.

4. That notwithstanding the terms and conditions of said contract, said defendant on or about July 24, 1911 notified plaintiff that his employment with the defendant ceased from that date, and that prior to said notification he had received no intimation, knowledge or notice that defendant intended to dispense with his services. That the relation between plaintiff and defendant was identically the same on July 24th, 1911 that it was at all times from and after November 15th, 1910, and his services were as necessary and profitable to said defendant upon July 24th, 1911 as at any time prior thereto.

5. That contrary to the terms of said contract, plaintiff received no prior notice of defendant's intention to terminate said contract; that he was arbitrarily, capriciously and without cause discharged from defendant's employ.

6. That said plaintiff did not neglect his duty to defendant, he did not refuse to follow instructions, that his work and services were profitable and desirable to said defendant and that it had no cause or reason whatever for discharging him without giving the 30 days notice as provided in said contract.

7. That by reason of said unlawful termination to said contract without giving the said 30 days' notice, said defendant is indebted to plaintiff in the sum of One Hundred Twenty-five Dollars (\$125).

8. That during the month immediately following said discharge it was impossible for plaintiff to procure other employment and said month was a total loss to him by reason of his not receiving said notice as aforesaid.

WHEREFORE, Plaintiff prays judgment against the said defendant for the sum of Two Thousand Eighty-two Dollars and ninety-six cents (\$2,082.96) and interest thereon at 7 per cent since January 1st, 1910, together with the sum of One Hundred Twenty-five Dollars (\$125), and interest thereon at 6 per cent since August 1st, 1911, together with costs and disbursements of this action.

Dated March 8, 1912.

S. A. Keenan.

STATE OF WASHINGTON,

County of King—ss.

S. A. Keenan being first duly sworn on his oath states that he is the attorney for the Plaintiff in the above entitled cause, that he has read the foregoing Second Amended Complaint and believes the same to be true, that this verification is not made by Plaintiff for the reason that he is at present absent from the county of King and State of Washington.

S. A. KEENAN.

Subscribed and sworn to before me this 8th day of March, 1912.

[Notarial Seal.]

ALFRETТА M. HOFFSTATER,

Notary Public in and for the State of Washington,
residing at Seattle.

“EXHIBIT A.”

“THIS AGREEMENT, entered into this 13th day of July, 1908, by and between the International Harvester Company of America, (Incorporated) party of the first party, and J. A. Cressey of Watertown, State of S. D., party of the second part.

WITNESSETH, That the first party hereby hires the second party to serve and to perform such duties and at such places as it may from time to time direct; and the second party agrees to faithfully perform to the best of his ability all the duties and responsibilities of such service, and to devote his whole and undivided time to the party of the first part during the continuance of this contract, and not to en-

gage, or to be engaged, nor to be interested in other business during the existence of this contract.

IN CONSIDERATION the first party will pay to the second party at the rate of One hundred twenty-five and no 100 Dollars (\$125.00) per month and necessary traveling expenses actually incurred in the business while away from Aberdeen, S. D. his home or usual place of residence.

This contract to be in force from 15th day of August, 1908, until canceled, which may be done by either party hereto, without liability for damage, by giving written notice.

And it is further agreed that the second party is to furnish at his own expense to first party a bond for the sum of \$2000.00 in some surety company, to be designated by the first party.

INTERNATIONAL HARVESTER COMPANY
OF AMERICA,

Approved at Chicago, Ill.,
July 18th, 1908.

By J. C. Sheldon.

International Harvester
Company of America,

J. A. Cressey.

By J. N. Coburn."

EXHIBIT "B".

THIS AGREEMENT, entered into this 10th day of August, 1909, by and between the International Harvester Company of America, (Incorporated), party of the first part, and J. A. Cressey, of Aberdeen, State of S. D. party of the second part.

WITNESSETH: That the first party hires the

second party to serve and perform such duties and at such places as it may from time to time direct; and the second party agrees to faithfully perform to the best of his ability all the duties and responsibilities of such service, and to devote his whole and undivided time to the party of the first part during the continuance of this contract. Second party agrees to remit promptly to first party all money collected for first party.

IN CONSIDERATION the first party will pay to the second party at the rate of One hundred thirty-seven and 50/100 Dollars (\$137.50) per month and necessary traveling expenses actually incurred in the business while away from Aberdeen, S. D. his home or usual place of residence.

This contract to be in force from 1st day of August, 1909 until cancelled, which may be done by either party hereto, without liability for damage, by giving written notice.

And it is further agreed that the said second party is to furnish at his own expense to first party a bond for the sum of \$2,000.00 in some surety company, to be designated by the first party.

INTERNATIONAL HARVESTER COMPANY
OF AMERICA,

By J. C. Sheldon.

J. A. Cressey.

Approved at Chicago, Ill., Aug. 13, 1909.

INTERNATIONAL HARVESTER COMPANY
OF AMERICA,

By J. N. Coburn."

EXHIBIT "C."

Applicable to the season of 1909, with the exception that we have made the standard for Mr. Cressey and Mr. Williams for 1909 as follows:

For the first 8 months of the year, that is, from January 1st, to September 1st:

Per cent cost on cash collected7 per cent
Per cent cost on cash and claims secured....5 per cent

For the 4 months of the year from September 1st, to January 1st:

Per cent cost on cash collected2 per cent
Per cent cost on cash and claims secured 2 per cent
Desperate claims average for the year\$2,500

We have made the standard for Mr. Reed for 1909 as follows:

For the first 8 months of the year, that is, from January 1st, to September 1st:

Per cent cost on cash collected.....10 per cent
Per cent cost on cash and claims secured.... 7 per cent

For the 4 months of the year from September 1st, to January 1st:

Per cent cost on cash collected.....4 per cent
Per cent cost on cash and claims secured.....4 per cent
Desperate claims average for the year.....\$2500

EXHIBIT "D."

AGREEMENT, entered into this 15th day of November, 1910, between the International Harvester Company of America, (Incorporated) party of the first part, and J. A. Cressey, of Eugene, Oregon, party of the second part.

The party of the first part hereby agrees to employ the party of the second part as long as needed beginning November 15th, 1910, at the rate of \$125.00 Dollars per month and his necessary and legitimate traveling expenses when away from Eugene, Oregon.

The party of the second part hereby agrees to devote all of his time and ability to the transaction of first party's business as may be directed, and also agrees to make prompt, complete and accurate reports of his work and expenses to said First party. Second party agrees to remit promptly to first party all money collected for first party.

The agreement is subject to the following conditions: Second party to furnish first party a surety bond at any time if requested, for the sum of \$2,000.00, in the form to me designated by first party, at his own expense. Either party may terminate this agreement by giving thirty days' notice to the other party. The first party may terminate the agreement at any time for neglect of duty, refusal to follow instructions, or should it consider second party's work unprofitable or undesirable, in which event compensation shall cease the day and date the agreement is terminated.

Should the time of service be continued by first party beyond the time specified, it is to be on the same terms and conditions as above.

INTERNATIONAL HARVESTER COMPANY
OF AMERICA,

By L. W. Carnahan.
J. A. Cressey.

[Endorsed]: Second Amended Complaint. Filed
Apr. 22, 1912.

A. M. CANNON,
Clerk.

And afterwards, to wit, on the 2 day of May, 1912,
there was duly filed in said Court, a Motion to
Strike in words and figures as follows to wit:

[Motion to Strike Second Amended Complaint.]

*In the District Court of the United States, for the
District of Oregon.*

J. A. CRESSEY,

Plaintiff,

vs.

INTERNATIONAL HARVESTER COMPANY
OF AMERICA, a corporation,

Defendant.

Comes now the defendant in the above entitled
action and moves the above entitled court that the
following portions of plaintiff's second amended com-
plaint be stricken out for the reasons stated.

1. Beginning with the word "that" in line 21 on
page 1, and ending with the word "territory" in line
24 on page 1, for the reason that the same is immateri-
al and redundant.

2. Beginning with the word "and" in line 24 on
page 1 and ending with the word "paper" in line 4 of
page 2, for the reason that the same is immaterial and
redundant.

3. Beginning with the word "that" in line 4 on
page 2 and ending with the word "year" in line 12 on

18. Beginning with the word "that" in line 19 on page 4 and ending with the word "knew" in line 21 on page 4, for the reason that the same is immaterial and redundant.

19. Beginning with the word "that" in line 24 on page 4 and ending with the word "knew" in line 30 on page 4, for the reason that the same is immaterial and redundant.

20. Beginning with the word "and" in line 30 on page 4 and ending with the word "employ" in line 2 on page 5, for the reason that the same is immaterial and redundant.

21. Beginning with the word "all" in line 2 on page 5 and ending with the word "year" in line 4 on page 5, for the reason that the same is immaterial and redundant.

22. Beginning with the word "and" in line 14 on page 5 and ending with the word "uncollectable" in line 18 on page 5, for the reason that the same is immaterial and redundant.

23. Beginning with the word "that" in line 5 on page 6 and ending with the word "company" in line 8 on page 6, for the reason that the same is immaterial and redundant.

24. Beginning with the word "that" in line 8 on page 6 and ending with the word "contract" in line 9 on page 6, for the reason that the same is immaterial and redundant.

25. Beginning with the word "he" in line 9 on page 6 and ending with the word "1909" in line 20 on

page 6, for the reason that the same is immaterial and redundant.

26. Beginning with the word "and" in line 20 on page 6 and ending with the word "contract" in line 22 on page 6, for the reason that the same is immaterial and redundant.

27. That paragraph 6 on page 7 be stricken out for the reason that the same is immaterial and redundant.

28. That paragraph 7 on page 7 be stricken out for the reason that the same is immaterial and redundant.

29. Beginning with the word "that" in line 2 on page 8 and ending with the word "commission" in line 7 on page 8, for the reason that the same is immaterial and redundant.

30. Beginning with the word "but" in line 8 on page 8 and ending with the word "pay" on page 8, line 13, for the reason that the same is immaterial and redundant.

31. Beginning with the word "in" in line 15 on page 8 and ending with the word "August" in line 18 on page 8, for the reason that the same is immaterial and redundant.

32. Beginning with the word "stating" in line 19 on page 8 and ending with the word "aforesaid" in line 21 on page 8, for the reason that the same is immaterial and redundant.

33. Beginning with the word "that" in line 21 on page 8 and ending, with the word "agreements" in line 29 on page 8, for the reason that the same is im-

material and redundant.

34. Beginning with the word "and" in line 29 on page 8 and ending with the word "contract" in line 2 on page 9, for the reason that the same is immaterial and redundant.

35. Beginning with the word "provided" in line 3 on page 9 and ending with the word "Chicago" in line 7 on page 9, for the reason that the same is immaterial and redundant.

36. Beginning with the word "that" in line 7 on page 9 and ending with the word "aforesaid" in line 8 on page 9, for the reason that the same is immaterial and redundant.

37. Beginning with the word "That" in line 11 on page 9 and ending with the word "service" in line 13 on page 9, for the reason that the same is immaterial and redundant.

38. Beginning with the word "the" in line 13 on page 9 and ending with the word "earning" in line 15 on page 9, for the reason that the same is immaterial and redundant.

39. Beginning with the word "and" in line 15 on page 9 and ending with the word "knew" in line 22 on page 9, for the reason that the same is immaterial and redundant.

40. Beginning with the word "and" in line 14 on page 10 and ending with the word "thereto" in line 20 on page 10, for the reason that the same is immaterial and redundant.

41. That paragraph 5 on page 10 be stricken out

for the reason that the same is immaterial and redundant.

COLE & COLE,

Attorneys for Defendant.

[Endorsed]: Motion. Filed May 2, 1912.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to wit, on Monday, the 20 day of May, 1912, the same being the 67 Judicial day of the Regular March, 1912, Term of said Court; Present: the Honorable R. S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Order Sustaining Motion to Strike.]

*In the District Court of the United States, for the
District of Oregon.*

J. A. CRESSEY,

v.

INTERNATIONAL HARVESTER COMPANY

May 20, 1912.

No. 3863.

This cause heretofore submitted on motion to strike parts of Second Amended Complaint came on regularly at this time for the ruling of the Court and thereupon, after due consideration, It is Ordered that said motion to strike be and hereby is granted.

And afterwards, to wit, on the 17 day of June, 1912, there was duly filed in said court, a Demurrer to Second Amended Complaint, in words and figures as follows to wit:

[Demurrer to Second Amended Complaint.]

*In the District Court of the United States, for the
District of Oregon.*

J. A. CRESSEY,

Plaintiff,

vs.

INTERNATIONAL HARVESTER COMPANY
OF AMERICA, a corporation,

Defendant.

Comes now the defendant in the above entitled action and demurs to plaintiff's second amended complaint as follows:

I.

Defendant demurs to plaintiff's first cause of action set out in plaintiff's second amended complaint for the reason and upon the ground that the allegations contained in said first cause of action do not state facts sufficient to constitute a cause of action against defendant.

II.

Defendant demurs to plaintiff's second cause of action for the reason and upon the ground that the allegations contained in said second cause of action do not state facts sufficient to constitute a cause of action against defendant herein.

COLE & COLE,

Attorneys for Defendant.

[Endorsed]: Demurrer. Filed June 17, 1912.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to wit, on Monday, the 24 day of June, 1912, the same being the 95 Judicial day of the Regular March, 1912, Term of said Court; Present: the Honorable R. S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Order Sustaining Demurrer to Second Amended Complaint.]

In the Circuit Court of the United States for the District of Oregon.

J. A. CRESSEY,

Plaintiff,

vs.

INTERNATIONAL HARVESTER COMPANY.

No. 3863.

June 24, 1912.

This cause came on regularly at this time on demurrer to plaintiff's second amended complaint; whereupon, by consent of parties, demurrer submitted without argument, and thereupon after due consideration it is ordered that demurrer to second amended complaint be and the same is hereby sustained, to which ruling and order of the court plaintiff excepts.

And afterwards, to wit, on the 3 day of July, 1912, there was duly filed in said Court, a Notice, in words and figures as follows to wit:

[Notice of Application for Entry of Judgment.]

*In the District Court of the United States, for the
District of Oregon.*

J. A. CRESSEY,

Plaintiff,

vs.

INTERNATIONAL HARVESTER COMPANY
OF AMERICA, a corporation,

Defendant.

To the above named plaintiff, and to S. A. Keenan,
his attorney:

PLEASE TAKE NOTICE That on the 8th day of
July, 1912, defendant in the above entitled action will
apply to the above entitled court for judgment
against plaintiff, as demanded in defendant's answer,
by default of plaintiff in further pleading.

COLE & COLE,

Attorneys for Defendant.

[Endorsed]: Notice. Filed July 3, 1912.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to wit, on Monday, the 8 day of July,
1912, the same being the 6 Judicial day of the
Regular July, 1912, Term of said Court; Present:
the Honorable R. S. BEAN, United States Dis-
trict Judge presiding, the following proceedings
were had in said cause, to-wit:

[Final Judgment.]

*In the District Court of the United States, for the
District of Oregon.*

J. A. CRESSEY,

Plaintiff,

vs.

INTERNATIONAL HARVESTER COMPANY
OF AMERICA, a corporation,

Defendant.

WHEREAS, the defendant, International Harvester Company of America, has filed its remurrer to each of the separate causes of action set forth in plaintiff's second amended complaint, and

WHEREAS said demurrer was heretofore submitted to the court on the 24th day of June, 1912, and

WHEREAS the court having heretofore on the 24th of June, 1912, sustained defendant's demurrer to each of the separate causes of action set forth in plaintiff's second amended complaint, and

WHEREAS plaintiff has failed and refused to plead further, and has not made any further appearance in said action in any manner,

NOW, THEREFORE, on motion of defendant that judgment be entered, IT IS HEREBY CONSIDERED, ORDERED AND ADJUDGED That plaintiff, J. A. Cressey, take nothing in the above entitled action, and that defendant, International Harvester Company of America, go hence without day, and have and recover of and from plaintiff its costs and disbursements incurred in the above entitled ac-

tion taxed at &..... and that execution issue therefor.

And afterwards, to wit, on the 17 day of July, 1912, there was duly filed in said Court, a Petition for Writ of Error, in words and figures as follows to wit:

[Petition for Writ of Error.]

In the District Court of the United States, for the District of Oregon.

J. A. CRESSEY,

Plaintiff,

vs.

INTERNATIONAL HARVESTER COMPANY
OF AMERICA, a corporation,

Defendant.

No. 3863.

Now comes J. A. Cressey, Plaintiff herein, and says that on or about the 8th day of June, 1912, this court entered judgment herein in favor of the defendant and against this plaintiff in which judgment and the proceedings had prior thereunto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more fully and in detail appear from the assignment of errors which is filed with this petition.

WHEREFORE, this plaintiff prays that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of errors so complained of, and that a

transcript of the record, proceedings and papers in this cause, duly authenticated may be sent to said Circuit Court of Appeals.

Dated July 10, 1912.

S. A. KEENAN,
Attorney for Plaintiff.

[Endorsed]: Petition for Writ of Error. Filed July 17, 1912.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 17 day of July, 1912, there was duly filed in said Court, Assignments of Error, in words and figures as follows to wit:

[Assignments of Error.]

*In the District Court of the United States, for the
District of Oregon.*

J. A. CRESSEY,

Plaintiff,

vs.

No. 3836.

INTERNATIONAL HARVESTER COMPANY
OF AMERICA, a corporation,

No. 3863.

Defendant.

J. A. CRESSEY, Plaintiff in this action in connection with, and as a part of his petition for a Writ of Error filed herein, making the following assignment of errors, which he avers were committed by the court in the rendition of the judgment against this plaintiff

appearing upon the record herein, that is to say:

1. The court erred in sustaining the defendant's motion to strike certain parts and portions of his Second Amended Complaint.

2. The court erred in holding and deciding that plaintiff's Second Amended Complaint did not state facts sufficient to constitute a cause of action against the defendant.

3. The court erred in sustaining the demurrer of defendant to plaintiff's Second Amended Complaint.

4. The court erred in rendering judgment against this plaintiff upon the sustaining of the demurrer of defendant.

5. The court rendered judgment against plaintiff, whereas, judgment ought to have been rendered in favor of the plaintiff and against the defendant.

WHEREFORE, Plaintiff prays that the said judgment may be reversed.

Dated July 10, 1912.

S. A. KEENAN,
Attorney for Plaintiff.

[Endorsed]: Assignments of Error. Filed July 17, 1912.

A. M. CANNON,
Clerk.

And afterwards, to wit, on the 17 day of July, 1912, there was duly filed in said Court, an Order Allowing Writ of Error, in words and figures as follows to wit:

[Order Allowing Writ of Error.]

*In the District Court of the United States, for the
District of Oregon.*

J. A. CRESSEY,

Plaintiff,

vs.

No. 3863.

INTERNATIONAL HARVESTER COMPANY
OF AMERICA, a corporation,
Defendant.

No. 3863.

This 17 day of July, 1912, came the plaintiff by his attorney, and filed herein and presented to the court his petition praying for the allowance of a Writ of Error, and Assignment of Errors intended to be urged by him, praying, also, that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration thereof the court does allow the Writ of Error upon the plaintiff giving bond according to law, in the sum of \$500.00, which it shall operate as a supersedeas bond.

Dated July 10, 1912.

CHAS. E. WOLVERTON,

Judge.

[Endorsed]: Order Allowing Writ of Error. Filed July 17, 1912.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 10 day of August, 1912, there was duly filed in said Court, a Bond on Writ of Error, in words and figures as follows to wit:

[Bond on Writ of Error.]

*In the District Court of the United States, for the
District of Oregon.*

J. A. CRESSEY,

Plaintiff,

vs.

No. 3863.

INTERNATIONAL HARVESTER COMPANY
OF AMERICA, a corporation,

Defendant.

No. 3863.

Know All Men By These Presents, That I, J. A. Cressey, as principal, and National Surety Company, a New York corporation, duly authorized and empowered to become surety on bonds in the state of Oregon, as surety, are held and firmly bound unto the defendant in error, International Harvester Company of America, in the full and just sum to be paid to the said defendant in error, International Harvester Company of America, its certain attorneys, executors, administrators and assigns; to which payment well and truly to be made, we bind ourselves, our heirs, exe-

cutors and administrators, jointly and severally by these presents. Sealed with our seals and dated this 6th day of August, in the year of our Lord one thousand and twelve.

Whereas, lately at a District Court of the United States for the District of Oregon, in a suit pending in said court, between J. A. Cressey, plaintiff, and International Harvester Company of America, defendant, a judgment was rendered against the said J. A. Cressey, and the said J. A. Cressey having obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the judgment in the aforesaid suit, and a citation, directed to the said International Harvester Company of America citing and admonishing him to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in said circuit on the day of August next.

Now, the condition of the above obligation is such that if the said J. A. Cressey shall prosecute said writ of error to effect and answer all damages and costs if he fails to make the said plea full force and virtue.

J. A. CRESSEY, [Seal.]

NATIONAL SURETY COMPANY, [Seal.]

By Frank E. Smith, Attorney in Fact.

Sealed and delivered in the presence of

C. A. E. Whitton.

Approved by

Chas. E. Wolverton,

District Judge.

[Endorsed]: Bond. Filed August 10, 1912.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to wit, on the 14 day of August, 1912, there was duly filed in said Court, a Writ of Error, in words and figures as follows to wit:

[Writ of Error.]

In the United States Circuit Court of Appeals for the Ninth District.

J. A. CRESSEY,

Plaintiff in Error,

vs.

INTERNATIONAL HARVESTER COMPANY
OF AMERICA, a corporation,

Defendant in Error.

THE UNITED STATES OF AMERICA,—ss.

THE PRESIDENT OF THE UNITED STATES
OF AMERICA.

To the Judge of the District Court of the United
States for the District of Oregon:

GREETING:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the District Court before the Honorable R. S. Bean, one of you, between J. A. Cressey, Plaintiff and Plaintiff in Error, and International Harvester Co. of America, a corporation, Defendant and Defendant in Error, a manifest error hath happened to the great

damage of the said Plaintiff in Error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

WITNESS the HONORABLE EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States this 14 day of August, 1912.

A. M. CANNON,

Clerk of the District Court of the United States for the District of Oregon.

[Endorsed]: Writ of Error. Filed Aug. 14, 1912.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to wit, on the 16 day of August, 1912, there was duly filed in said Court, a Citation on

Writ of Error, in words and figures as follows,
to wit:

[Citation on Writ of Error.]

UNITED STATES OF AMERICA,

District of Oregon—ss.

To International Harvester Co. of America and to
Cole & Cole, your attorneys of record:

GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States for the District of Oregon, wherein J. A. Cressey is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 14 day of August, in the year of our Lord, one thousand, nine hundred and twelve.

CHAS. E. WOLVERTON,

Judge.

[Endorsed]: Citation on Writ of Error. Filed
August 16, 1912.

A. M. CANNON,

Clerk U. S. District Court.

Due and personal service of the within citations on

writ of error admitted on this 16th day of August, A. D., 1912, in the city of Portland, Oregon.

INTERNATIONAL HARVESTER CO. OF AMERICA,

By Cole & Cole, its attorneys.

And afterwards, to wit, on Thursday, the 12 day of September, 1912, the same being theJudicial day of the Regular July, 1912, Term of said Court; Present: the Honorable CHAS. E. WOLVERTON, United States District Judge presiding, the following proceedings were had in said cause to wit:

[Order Enlarging Time to File Transcript.]

In the District Court of the United States, for the District of Oregon.

J. A. CRESSEY,

Plaintiff,

vs.

THE INTERNATIONAL HARVESTER COMPANY OF AMERICA,

Defendant,

3863.

September 12, 1912.

Now, at this day, for good cause shown, it is ORDERED that the plaintiff's time for filing and docking the record on appeal in this cause in the United States Circuit Court of Appeals, Ninth Circuit, be and the same is hereby enlarged and extended sixty (60) days from this date.

CHAS. E. WOLVERTON,

Judge.

